



Attorney General  
Betty D. Montgomery

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May 7, 1998

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: *In the Matter of Calling Party  
Pay Service Option in the  
Commercial Mobile Radio  
Services, WT Docket No. 97-  
207.*

Dear Secretary:

Please find enclosed the original and eleven copies of comments submitted on behalf of the **Public Utilities Commission of Ohio** in the above referenced docket. Please return one stamped copy in the enclosed self-addressed, stamped return envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steven Nourse".

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In the Matter of )  
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 Calling Party Pay Service Option ) WT Docket No. 97-207  
 in the Commercial Mobile Radio )  
 Services )

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**COMMENTS OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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## INTRODUCTION

On March 9, 1998, the Federal Communications Commission (FCC) released a Public Notice (Notice) (DA 98-468) in WT Docket No. 97-207 (WT 97-207) in response to the Cellular Telecommunications Industry Association's (CTIA's) Petition for Expedited Consideration requesting the FCC to issue a Notice of Proposed Rulemaking (NPRM) to adopt uniform nationwide rules for calling party pays (CPP) service. In addition to inviting comments on the procedural and substantive aspects of the CTIA Petition, parties commenting are also invited to respond to related issues set forth for comment in the FCC's Calling Party Pays Notice of Inquiry (NOI) released on October 23, 1997, in WT Docket No. 97-207 (WT 97-207). Comments in

response to the FCC's Notice are due at the FCC on or before May 8, 1998, and replies are due on June 8, 1998.

## **BACKGROUND**

CTIA's petition maintains that there is minimal disagreement in the telecommunications industry concerning the provision of CPP service. CTIA submits that the remaining issues, such as billing, jurisdiction, and oversight can be addressed by the FCC based on proposals set forth by CTIA. Specifically, CTIA maintains that the FCC should adopt a market-based approach to determine whether and when CPP will be implemented. CTIA also recommends that the FCC adopt a national customer notification policy regarding the implementation of CPP service. Finally, CTIA asserts that the FCC has exclusive jurisdiction over CPP since the states are prohibited from regulating rates or market entry of commercial mobile radio service (CMRS) providers.

In addition to the FCC's Notice concerning CTIA's petition, the Public Utilities Commission of Ohio (Ohio Commission) also responds to the FCC's NOI regarding jurisdiction for cellular calling party pays (CPP) service and cellular CPP service customer safeguards. (Sections D and F, respectively, of the FCC's NOI). The Ohio Commission also responds to the FCC's request for comments on regulatory requirements of the individual states concerning CPP service. (Section A of the FCC's NOI.)

## **DISCUSSION**

### **Jurisdictional Issues (NOI Section F)**

The FCC invited comment on the scope of its authority to require local exchange companies (LECs) to provide billing information and services that will enable CMRS providers to offer CPP services. Specifically, the FCC seeks comment on whether it has the authority under 47 U.S.C. § 332 (Section 332) to establish requirements regarding CPP arrangements between CMRS providers and LECs. NOI at ¶ 29. The FCC suggested that commenters also address whether Section 332 gives the FCC “authority to preempt State regulation in order to establish nationwide rules for CPP.” NOI at ¶ 29.

The Ohio Commission has generally approached CMRS issues with a streamlined regulatory approach where appropriate, and is currently considering further exemptions from regulation of the CMRS industries in Case No. 97-1700-TP-COI. For example, the Ohio Commission has never regulated the retail rates of CMRS services and has not regulated CMRS wholesale rates for the last five years (well prior to the 1993 amendments to Section 332). Yet, CPP presents a unique set of issues relative to CMRS because it really is a rate issue for landline LEC customers, not CMRS customers.

The only “rate issue” for CMRS customers is the fact that CMRS customers will not pay rates associated with CPP calls. Consequently, it is erroneous to conclude that the FCC has jurisdiction under 47 U.S.C. § 332 to implement national CPP rules. Even though the Ohio Commission may largely agree with the FCC’s general approach, this jurisdictional question is

important because CPP directly affects the rates paid by landline customers for calls that are local in nature. In other words, the Ohio Commission's interest is focused not on the CMRS aspects of CPP, but upon the aspects which affect landline LEC customers.

The 1993 amendments amending 47 U.S.C. § 332 contains limited federal preemption of State authority CMRS services:

[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

47 U.S.C. § 332(c)(3)(A) (West 1998). Congress clearly provided in the legislative history that it intended to reserve substantial authority to States:

It is the intent of the Committee that the states still would be able to regulate the terms and conditions of these services. By "terms and conditions" the Committee intends to include such matters as . . . *the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."*

H.R. Rep. No. 111, 103d Cong., 1st Sess. 2 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588 (emphasis added).

The FCC has previously concluded that CPP issues are properly characterized as billing issues reserved for State jurisdiction. *In the Matter of Petition of Arizona Commission ("Arizona Petition")*, GN Docket No. 93-252, 10 FCC Rcd. 7824. Specifically, the FCC concluded that "concerning 'calling party

pays' \* \* \* billing practices are considered 'other terms and conditions' of CMRS offerings, *not rates*, and the [Arizona Commission] retains authority to regulate such practices." *Arizona Petition*, 10 FCC Rcd. at 7837 (emphasis added). The FCC should respect its own precedents and follow its own decisions.

Nothing in the 1996 Act should affect the proper conclusion, as reached in the *Arizona* decision. The provision of UNEs (including billing services capabilities), as referenced in ¶ 28 of the NOI, has no bearing on the CPP issue currently before the FCC. Moreover, the NOI's reference in ¶ 28 to the *Iowa Utilities Board* decision regarding CMRS interconnection does not serve to confer jurisdiction on the FCC.

In that case, the Eighth Circuit held that "we believe that the Commission has the authority to issue rules of special concern to the CMRS providers \* \* \* but only as these provisions apply to CMRS providers." *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 (note 21) (1997) (emphasis added). Because CPP has nothing to do with the provision of UNEs and bears directly on rate issues for landline LEC customers (not CMRS customers), neither the 1996 Act nor the *Iowa Utilities Board* decision operate to confer CPP jurisdiction upon the FCC to the exclusion of State Commissions. Consequently, CPP issues do not amount to "rate regulation" of CMRS, and the FCC should conclude that State commissions have jurisdiction over CPP issues.

Even if CPP is considered a CMRS issue, CPP is properly characterized as a billing matter (one of the specific categories reserved by Congress for

States). Thus, even though the Ohio Commission shares the FCC's view that CMRS should generally be subject to little regulation, and assuming further that the Ohio Commission would generally endorse a similar approach to CPP as is being proposed (subject to specific comments below), it is important that the FCC's approach properly concludes that CPP is within the jurisdiction of State commissions. Finally, as a practical matter, because States like Ohio have already exercised jurisdiction over CPP, a new preemptive Federal standard could create inconsistencies, confusion and a lack of jurisdictional continuity.

Although the Ohio Commission has asserted the above jurisdictional arguments, it will nonetheless take this opportunity to offer substantive suggestions in this docket.

#### **Current Availability of CPP (NOI Section A)**

The FCC seeks information on which carriers offer cellular CPP service, details on the specific arrangements between carriers, and any regulatory requirements imposed by the individual states. NOI at ¶ 7. Two local exchange carriers in the State of Ohio offer CPP service to CMRS providers: Ameritech Ohio (Ameritech) and the Cincinnati Bell Telephone Company. More specifics on each carrier's provision of CPP service follows.

In 1989, the Ohio Commission released two decisions (attached) authorizing Cincinnati Bell Telephone Company (Cincinnati Bell) to enter into agreements with two cellular providers for CPP service. The agreements between the LEC and the cellular providers calls for two NXXs (or prefixes) to

be made available to each cellular carrier. One NXX is reserved for customers choosing to have all landline calls billed to the cellular provider, and the other NXX is used by cellular customers electing the CPP service option. Landline customers calling a cellular customer subscribing to CPP service are further alerted that additional charges may apply by being required to dial a "1" prior to dialing the appropriate NXXs assigned to the cellular carrier. Additionally, the landline service provider (Cincinnati Bell), at the time of these agreements, committed to provide bill inserts to its residential and non-residential subscribers, in addition to utilizing both print and electronic mediums, to inform customers of CPP service. Cincinnati Bell also indicated that it would place explanations of cellular CPP service in its directories. Finally, directory listings for cellular customers subscribing to CPP service have attached to them a designation noting that calls placed to this customer will result in additional charges.

In 1996, the Ohio Commission approved Ameritech Ohio's (Ameritech's) application to establish cellular CPP service. Ameritech's CPP service provides that a landline CPP caller receive a cellular carrier-specific announcement that specifies that there are additional charges for CPP calls. The cellular carrier establishes the CPP charges to the landline caller. The calling party, after receiving the message has the opportunity to terminate the call without charge. If the call is completed, CPP charges apply.

Consistent with the discussion of jurisdictional issues above, the FCC should recognize that the Ohio Commission has not regulated the rates for



CPP service by Ameritech or CBT. Our interest has been in insuring that landline customers know through various means that a call may result in additional charges.

#### **Consumer Protection Issues (NOI Section D)**

The NOI sought information regarding how the calling party can best be informed of charges for calls to CMRS phones. The FCC seeks comment on whether notification of the calling party, prior to the completion of the call, that he or she will be required to pay for the call is a sufficient mechanism to create a binding contractual agreement obligating the calling party to make such payment. (NOI at Paragraph 21.) The FCC also requests comment on whether it would be in the public interest to develop a uniform national method to inform the party of the magnitude of the charge and of the calling party's responsibility to pay for the call. (NOI at Paragraph 22.)

In the event the FCC determines that it possesses the requisite legal authority to impose national standards for cellular CPP service, the Ohio Commission maintains that the FCC must adopt customer information rules for CPP service that ensure that landline customers are aware of the additional charges associated with a CPP call. In particular, the Ohio Commission notes that landline customers, upon placing a CPP call, should be made aware, through a call intercept, that per-minute charges over and above normal local usage charges may apply. Prior to the call being completed, the landline customer must also be afforded the option to terminate the call

without charge. Moreover, at the time of the call, landline customers placing CPP calls, upon request on a real-time basis, should be afforded the option to be made aware of all applicable CMRS per-minute and non-recurring service charges for the call. In the event an intercept cannot provide CMRS provider-specific charges, the landline customer should be made aware on a real-time basis of the highest per-minute and nonrecurring charges that could be rendered by the cellular provider for the call. In the event this cannot be provided on a real-time basis, the Ohio Commission alternatively recommends that CPP customers be provided information on how the charges for a call can be obtained via a toll-free telephone number.

Regarding the issue of requiring customers to dial a "1" prior to dialing the appropriate NXX, the Ohio Commission notes that such a requirements may no longer adequately alert customers to additional charges. In particular, the Ohio Commission observes that, given the advent of recent area code (NPA) splits and overlays, dialing 1+ does not always indicate that a customer will have to pay additional charges for the call because many calls beginning with a "1" are local. As these lines begin to blur, it will be even more important that customers have other means to determine which calls will be subject to additional charges and which will not.

Consequently, the Ohio Commission would recommend that the FCC also require, if it adopts a policy that would require CPP customers to initiate the call by first dialing a "1", that the customer safeguards identified above also apply to these calls. The Ohio Commission notes that these additional

safeguards to landline customers are necessary since CPP service involves charges to landline customers who did not enter into contracts for service with cellular carriers. Consequently, they must be made aware that additional charges for the call will apply and further must be afforded, at the caller's request, the option to be informed of all charges that apply.

On a final note regarding customer safeguard issues, the Ohio Commission recommends that the FCC clarify in its decision on this issue to reflect that the standards it adopts are minimums and that individual states are permitted to establish rules that exceed the FCC's requirements.

#### CONCLUSION

In closing, the Ohio Commission wishes to thank the FCC for the opportunity to file comments in this docket.

Respectfully submitted,

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